



North Carolina Department of Environment and Natural Resources
Division of Water Quality

Beverly Eaves Perdue
Governor

Coleen H. Sullins
Director

Dee Freeman
Secretary

July 22, 2010

CERTIFIED MAIL #7008 1140 0002 6736 5084
RETURN RECEIPT REQUESTED

Mr. Tony Sample
Carolina Sunrock, LLC
P.O. Box 25
Butner, NC 27509.

Subject: **NOTICE OF VIOLATION**
NOTICE OF INTENT TO ENFORCE
NOV-2010-SS-0036
DWQ Project # 98-0592 and DWQ Project # 06-1404
Kitrell Quarry
36.17509°N, -78.44049°W
Removal of Best Usage
Other Waste (in-stream sediment)
Wetland Standards Violation
401 Water Quality Certification Condition Violations
Tar-Pamlico River Riparian Buffer Violations
Vance County

Dear Sir:

On July 15, 2010, Lauren Witherspoon from the Raleigh Regional Office of the Division of Water Quality (DWQ) conducted a site inspection at the Kitrell Quarry located off east of US 1 and north of the Tar River in Vance County, North Carolina. The streams on the site are unnamed tributaries (UT) to the Tar River and the Tar River, Class WS-IV NSW waters in the Tar-Pamlico River Basin.

Accordingly, the following observations were noted during the DWQ file review and site inspection:

This site is covered under the General Permit No. NCG020000 to discharge stormwater, mine dewatering, and process wastewater under the National Pollutant Discharge Elimination System. The Kitrell Quarry was reissued a Certificate of Coverage on February 7, 2005 (COC Number NCG020438).

On July 30, 1998, Carolina Corporation submitted a Pre-Construction Notification (PCN) and Permit Application, as well as supporting documentation, for Carolina Sunrock Corporation's proposed quarry (Kitrell Quarry). The impacts were requested under U.S. Army Corps of Engineers Nationwide Permit 26 and the corresponding General Water Quality Certification Number 3108 (GC3108). On August 24, 1998, DWQ issued a 401 Water Quality Certification (WQC) (DWQ Project # 98-0592) for the proposed quarry as was described in the application. This 401 WQC authorized the construction of a sedimentation control impoundment and a stormwater detention area impacting ~0.82 acre of wetlands and associated stream channel (see Figure 2).

One
North Carolina
Naturally

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On August 29, 2006, DWQ received a PCN application and additional information on September 21, 2006 and September 29, 2006 to widen a road in the northwestern portion of the property. The impacts were requested under U.S. Army Corps of Engineers Nationwide Permit 14 and the corresponding GC3404. On November 9, 2006, DWQ issued a 401 WQC (DWQ Project # 06-1404) to place fill within or otherwise impact 0.0328 acres of wetland, 75 linear feet of perennial stream channel, and 975 square feet (ft²) of Zone 1 of the Tar-Pamlico River basin protected buffers and 1,100 ft² or Zone 2 of the Tar-Pamlico River basin protected riparian buffers to construct a crossing upgrade to access a rail load out facility.

During the site inspection the DWQ observed unauthorized impacts including:

- Approximately 320 linear feet of stream channel had been impounded (see Figure 1) upstream of the authorized sediment control impoundment/stormwater detention pond (see Figure 2);
- Sediment deposition measuring 2-12 inches was observed in approximately 600 linear feet of stream channel upstream of this unauthorized impoundment. This portion of stream channel was also showing signs of bank failure and appeared to have been excavated in the past;
- A feature that is depicted on the *Soil Survey of Vance County* had been excavated approximately 320 linear feet upstream of the unauthorized impoundment;
- Approximately 100 feet of stream channel was impacted by sediment deposition downstream of Old Chavis Road (SR 1552). Approximately 5,000 square feet of Tar River Riparian Buffer was impacted by approximately 3-6 inches of sediment at this location;
- Approximately 50 square feet (0.001 acre) of wetland had been impacted by sediment deposition measuring approximately 5-10 inches in depth, east of the road that borders the railroad tracks;
- Diffuse flow was not being maintained at multiple locations including, but not limited to: areas upstream of the unauthorized pond, at the outfall at SR 1552, Basin 1, and Basin 2.

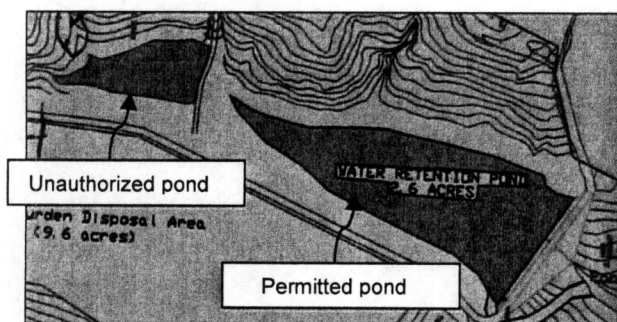


Figure 1: Current conditions on site

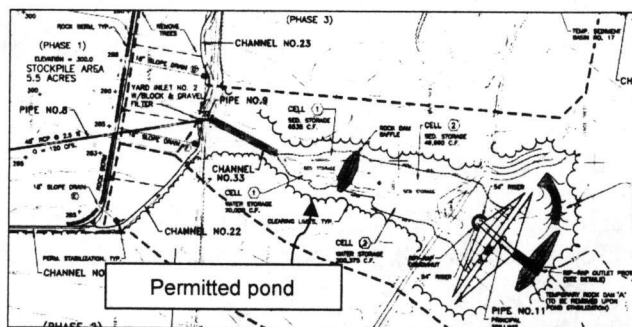


Figure 2: Lower Pond Authorized in DWQ Project # 98-0592

As a result of the site inspection and file review, the following violations, described below, are noted:

Item I. Removal of Best Usage

The excavation and impounding of the streams without a 401 WQC is a violation of 15A NCAC 02B .0211 (2) which reads as follows:

The waters shall be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, secondary recreation, and agriculture; sources of water pollution which preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard.

Item II. Other Waste (in-stream sediment)

The documented in-stream sediment deposition is a violation of 15A NCAC 02B .0211 (3)f which reads as follows:

Oils; deleterious substances; colored or other wastes: only such amounts as shall not render the waters injurious to public health, secondary recreation or to aquatic life and wildlife or adversely affect the palatability of fish, aesthetic quality or impair the waters for any designated uses.

Item III. Wetlands Standards

The observed sediment deposition in the wetland is in violation of 15A NCAC 02B .0231 (b) which reads as follows:

- (1) Liquids, fill or other solids or dissolved gases may not be present in amounts which may cause adverse impacts on existing wetland uses;
- (5) Hydrological conditions necessary to support the biological and physical characteristics naturally present in wetlands shall be protected to prevent adverse impacts on:
 - (C) The chemical, nutrient and dissolved oxygen regime of the wetland;
 - (D) The movement of aquatic fauna;
 - (F) Water levels or elevations.

Item IV. 401 Water Quality Certification Condition Violations

The 401 WQC DWQ Project # 98-0592 approval letter specifies that the approval is only valid for the purpose and design that you described in your application. If you change your project, you must notify DWQ and send us a new application.

The 401 WQC DWQ Project # 06-1404 states that the approval requires you to follow the conditions listed in the attached certification and any additional conditions listed below:

Condition 3:

No waste, spoil, solids, or fill of any kind shall occur in wetlands, waters, or riparian areas beyond the footprint of the impacts depicted in the 404/401 Permit Application. All construction activities, including the design, installation, operation, and maintenance of sediment and erosion control Best Management Practices, shall be performed so that no violations of state water quality standards, statutes, or rules occur.

Condition 8: Diffuse Flow

All constructed stormwater conveyance outlets shall be directed and maintained as diffuse flow at non-erosive velocities through the protected stream buffers such that it will not re-concentrate before discharging into a stream as identified within 15A NCAC 2B .0233 (5).

Item V. Tar-Pamlico River Basin Riparian Buffer Violation

The Buffer Rules apply to riparian buffers directly adjacent to surface waters in the Tar-Pamlico River Basin (intermittent streams, perennial streams, lakes, ponds and estuaries). The protected buffer extends 50-feet landward from the landward edge of coastal marsh (as identified by the Division of Coastal Management) or from the top of bank of any feature shown as surface waters on either a paper copy of the soil survey maps prepared by the Natural Resource Conservation Service of the U.S. Department of Agriculture or the most recent version of the 1:24000 scale quadrangle topographic maps prepared by the U.S. Geological Survey. The protected riparian buffer has two zones: Zone 1 consists of a vegetated area that is undisturbed except for uses provided for in Item (6) of this Rule (Title 15A NCAC 02B .0259); Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Item (6) of this Rule (Title 15A NCAC 02B .0259). The purpose of

these rules is to protect and preserve riparian buffers in the Tar-Pamlico River Basin to maintain the nutrient removal functions of these streamside areas necessary to protect surface waters.

15A NCAC 02B .0259 (4)

Zones 1 and 2 of the riparian buffer remain in vegetation that is undisturbed except for those uses provided for in Item (6) of this Rule.

Tar-Pam Buffer – Diffuse Flow

15A NCAC 02B .0259 (5)

Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.

Requested Response

You are directed to respond to this letter in writing to DWQ at the address provided below **within 30 days** of receipt. You are also encouraged to secure a consultant who specializes in stream and wetland restoration to assist you with the development and submittal of the following:

1. Documentation depicting all jurisdictional features (e.g. streams, buffers, and wetlands). A description and quantification of **all** the impacts to those jurisdictional features and your plans to avoid further stream, buffer, and wetland impacts on the site.
2. Explain in your response how and when you anticipate being in full compliance with the 401 WQCs.
3. Stream Restoration Plan (excavation and impoundment impacts) – Please explain how you plan to restore the pattern, profile and dimension of the impacted stream channels. The streambed must be restored to the original profile, the stream banks must be stabilized, and any fill material must be removed from the riparian zone. Replanting of the riparian zone will be required.
4. Stream, Riparian Buffer, and Wetland Restoration Plan (sediment impacts) – The sediment deposition in the streams, buffers, and wetland must be removed. As a part of this plan, you should provide the amount (depth) of material that has been deposited in the streams, buffers, and wetland. This information should be depicted on a map you provide. It is recommended that you use hand labor (buckets, shovels and wheelbarrows) to remove deposited sediment from the wetland and the streams and associated riparian buffer. The sediment should be removed from the streams, buffers, and the wetland, taken to high ground (outside the buffer) and stabilized. Also, the plan must address the measures that will be used for temporary stabilization/sediment control while this work is under way.
5. Riparian Zone planting – Please submit a Restoration Plan to this office for review and approval. This plan must be developed to ensure that at least two native tree species are planted at a density sufficient to provide 320 trees/acre at maturity. This density is usually achieved by planting approximately 436 trees/acre on a 10 ft. x 10 ft. grid or 681 trees/acre on a 8 ft. x 8 ft. grid. Please see the *Guidelines for Riparian Buffer Restoration* (October 2004) for assistance in developing your plan (available on the web at: <http://www.nceep.net/news/reports/buffers.pdf>). This plan must include the types of native woody vegetation selected, methodology of planting, and a site map indicating the location of the replanting efforts.

6. Please provide a plan demonstrating how diffuse flow will be achieved throughout the site. This plan should depict all of the outfalls on the property (any discharge in the vicinity of a riparian buffer) and measures to ensure diffuse flow will be maintained at each location.

Include a detailed implementation schedule with dates explaining when the stream, buffer, and wetland restoration will be accomplished. This schedule should include a three-year monitoring plan to ensure that the streams. It is important that you adhere to this new plan once approved by DWQ. If you make any modifications to the approved plan, DWQ must approve them prior to implementation.

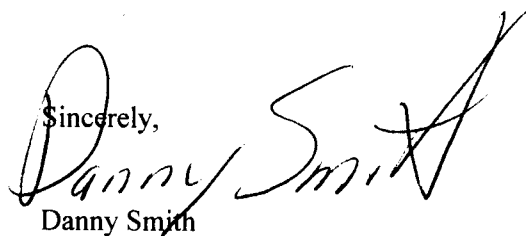
Finally, please explain how you propose to prevent these problems from reoccurring on future projects.

Submit Requested Items To:

Lauren Witherspoon
DWQ Raleigh Regional Office
3800 Barrett Drive
Raleigh, NC 27609

Thank you for your attention to this matter. This office is considering forwarding a civil penalty recommendation for assessment consideration and proceedings with injunctive relief procedures through the Attorneys Generals Office. **This office requires that the violations, as described above, be properly resolved. These violations and any future violations are subject to a civil penalty assessment of up to \$25,000.00 per day for each violation.** Should you have any questions regarding these matters, please contact Lauren Witherspoon at (919) 791-4200.

Sincerely,



Danny Smith
Regional Supervisor
Surface Water Protection Section

cc: DWQ RRO file copy
John Hennessy, NPS Assistance and Compliance Oversight Unit
Eric Alsmeyer, USACOE, 3331 Heritage Trade Drive, Ste105, Wake Forest, NC 27587
Ian McMillan, 401 Oversight/Express Review Permitting Unit
Jen Jones, Stormwater Unit, 1617 Mail Service Center, Raleigh, N C 27699-1617
Gabi Jones – DLR RRO